

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

LEONARDO de CARVALHO)
PEREIRA,)
Plaintiff,)
v.) CASE NO. 2:23-cv-5-ECM-JTA
NIVA COSTA CRUZ GUNTER,) (WO)
Defendant.)

ORDER

Before the court is Defendant Niva Costa Cruz Gunter's Motion to Sanction Plaintiff for Refusal to Comply with November 27, 2023 Order. (Doc. No. 39.)

Without making any findings at this time as to the merits of the motion, the court will again advise Plaintiff that this is his case, that he is obligated to comply with court orders and the Federal Rules of Civil Procedure, that he is obligated to deal in good faith with opposing counsel, that he cannot sit back and ignore court orders or good faith correspondence from opposing counsel, and that failing to do so risks the sanctions about which he has previously been advised on several occasions. The court further notes that Pereira's November 27, 2023 surgery does not necessarily excuse him from staying abreast of developments in this proceeding, as the November 27, 2023 Order (Doc. No. 35) was entered in response to Plaintiff's own "urgent" motion (Doc. No. 34), filed November 27,

2023,¹ seeking relief from the October 27, 2023 Order (Doc. No. 30), including the impending November 28, 2023 deadline for the parties to file the required joint Rule 26(f) discovery report. As Plaintiff filed the “urgent” motion seeking relief from a sharply upcoming deadline, it was incumbent on Plaintiff to take whatever efforts were necessary, including contacting the Clerk of the Court, to determine whether the court had granted the requested relief, or had denied it (in which case he was still obligated to comply with the previously set deadlines), or had otherwise acted upon the motion. In short, Plaintiff is bound by the November 27, 2023 Order (Doc. No. 35), despite the inconveniences of long-distance *pro se* litigation, which, in this situation, appear to have been exacerbated by Plaintiff’s own actions and circumstances.

Having again advised Plaintiff of his responsibilities in litigating this case, it is ORDERED as follows:

1. Gunter’s Motion to Sanction Plaintiff for Refusal to Comply with November 27, 2023 Order. (Doc. No. 39) is SET for oral argument and a hearing **by telephone conference on December 4, 2023, at 10:00 a.m.** At the hearing, Plaintiff shall SHOW CAUSE why he should not be sanctioned for failing to cooperate in good faith with opposing counsel and to comply with court orders and the Federal Rules of Civil Procedure by refusing to participate in jointly preparing the Rule 26(f) report. Sanctions may include an award of

¹ Plaintiff mailed his motion on November 20, 2023, nearly two weeks after his own evidence establishes that he first became aware of the existence of the October 27, 2023 Order. (Doc. No. 34 at 4; Doc. No. 34-1 at 2.)

attorney's fees and costs for incurred by the opposing party due to Plaintiff's failure to comply, and/or dismissal of this case with or without prejudice.

2. The Clerk of the Court shall serve Plaintiff with a copy of this Order in accordance with the usual procedures. In addition, in light of upcoming deadlines, on this one occasion,² the Clerk of the Court shall email Plaintiff a copy of this Order. Plaintiff is ADVISED that he is **not permitted to reply** to the Clerk's email with an email or to otherwise attempt inappropriately to communicate with the Office of the Clerk of the Court by email. **If Plaintiff attempts to communicate with the Office of the Clerk of the Court in a manner that violates this or previous orders, the Clerk of the Court shall immediately notify the undersigned of the infraction. Upon Plaintiff's receipt from the Clerk of the email containing a copy of this Order, Plaintiff shall immediately file, in writing, notice of receipt of the same. Again, filings by email are not accepted.**

The courtroom deputy will contact counsel and any unrepresented party to provide them with all necessary information for participating in the telephone conference proceedings. **The parties shall dial in to the telephone conference at least fifteen minutes prior to the start of the proceedings.**

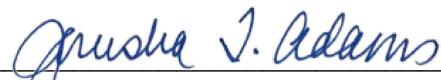
The Clerk of Court is DIRECTED to provide a court reporter for this hearing.

² Future orders shall **not** be served by email, unless otherwise specifically ordered.

The Clerk of the Court is further DIRECTED to make arrangements for the assistance of a Portuguese language interpreter at the telephonically held oral argument, hearing, and scheduling conference set for December 4, 2023. The interpreter may participate remotely in the telephone conference proceedings.

Failure to appear at any of the telephone proceedings scheduled for December 4, 2023, or to comply with any Order of this court or with the Federal Rules of Civil Procedure, including Rule 11, will be cause for sanctions as appropriate, including monetary sanctions, an adverse default judgment, or dismissal of this case with or without prejudice for failure to prosecute or failure to comply with court orders. Failure by any party or counsel to deal in candor and good faith with the court, opposing counsel, or the opposing party will result in sanctions or other appropriate remedies.

DONE this 1st day of December, 2023.



JERUSHA T. ADAMS
UNITED STATES MAGISTRATE JUDGE